

REMARKS

As an introductory matter, the Applicants respectfully remark that it has been found that the amendment of claim 1, which was introduced in the response to paper no. 20080131 (the 1st Office Action) has not yet been taken into consideration by the Examiner. In fact, no comments at all regarding the obviousness rejection of claim 1 were set forth in paper no. 20081014 (the 2nd and Final Office Action). Even so, applicant is herewith submitting a further amendment to claim 1 and is again responding to the arguments regarding obviousness presented by the examiner in paper no. 20080131.

Claim 1 has been amended to incorporate the limitations of claim 13, which is now canceled. Hence, no new matter is added as a result of this amendment. The barrier layer being provided during the actual manufacturing of the chewing gum tablet clarifies the nature of the barrier layer as a layer forming a fully or partly encapsulation of the chewing gum center and influencing the moderated tackiness of the gum base granules as little as possible.

Review of the prior art documents

Initially, a review of the teaching of CHERUKURI et al. (US 4,753,805) and YANG (EP 0 221 850) is outlined in the following.

CHERUKURI et al., relates to a tableted chewing gum composition comprising a blend of chewing gum granules and a compression aid which is formed into tablets (Cherukuri et al., col. 1, lines 11-13). The chewing gum has a moisture content of 2-8%.

YANG relates to a tableted chewing gum containing one or more active ingredients including flavorants which are entrapped or encapsulated in a delivery system (Yang, page 1, lines 1-3).

In more details, CHERUKURI et al. describes the manufacture of tableted chewing gum as a process involving the steps of (Cherukuri et al., claim 1 and col. 3, lines 7-16):

- 1) preparing a chewing gum composition comprising gum base and sweetener;
- 2) grinding the chewing gum composition by utilizing a grinding aid to form a granulation;
- 3) blending the granulation with a compression aid;
- 4) compressing the granulation to form a tablet.

The grinding aid according to CHERUKURI et al. is selected from alkalimetal phosphates, alkaline earth metal phosphates and maltodextrins (Cherukuri et al., col. 4, lines 1-4). The granulation, i.e. the chewing gum granules, can according to CHERUKURI et al. be formed using standard grinding techniques known in the art (Cherukuri et al., col. 4, lines 26-28).

The compression aid according to CHERUKURI et al. is described as a combination of three individual components (Cherukuri et al., col. 5, lines 62-63 and col. 6, lines 3-4). The three components of compression aid are lubricants, glidants and anti-adherents (Cherukuri et al. col. 4, line 34 – col. 5, line 61). Specific examples are e.g. magnesium stearate, calcium carbonate, fumed silica and talc.

Please, notice that CHERUKURI et al. is consistent throughout the specification and claims as regards the compression aid being applied as outlined above, i.e. by way of blending with the granulation prior to compression (Cherukuri et al., col. 1, line 12; col. 2, lines 62-63;

col. 3, lines 56-57; col. 11, lines 1-2; col. 11, lines 44-46; col. 12, lines 43-46; col. 12, line 67-68; col. 13, lines 52-57; col. 14, lines 34-39).

With regard to YANG, the process of tableting is described in fewer details. YANG is focused on details about the delivery system, which is incorporated in the disclosed tablets, and refers to conventional procedures when it comes to the preparation and manufacturing of the tablets. However, according to YANG, the pressed tablets are preferably prepared by dry granulation or a direct compression method. Mixing with lubricants before the compression step is explicitly stated for the dry granulation technique (Yang, page 5, lines 32-34) and is also apparent for the direct compression method as it is stated that the milled ingredients are mixed and then directly compressed and that such ingredients primarily include sweeteners, lubricants, etc (Yang, page 5, lines 34-37).

Rejections under 35 U.S.C. § 103

The Examiner continues in paragraph no. 2, paper no. 20081014 to reject claims 1-6, 8-19 and 28-32 under 35 U.S.C. §103(a) as being unpatentable over CHERUKURI et al. (US 4,753,805, cols. 2-8) or YANG (EP 0 221 850, cols. 3, 7-10 and claim 13) as set forth in paragraph no. 5, paper no. 20080131. The Applicants respectfully traverse this rejection and submit the following comments and arguments.

For many years it has been well-known that compressed chewing gum has a more crumbly texture, especially during the initial chewing, as compared to conventionally mixed and cut chewing gum. In the pending application, the need for obtaining compressed chewing gum tablets resembling conventional chewing gum with respect to texture has been addressed.

Starting from CHERUKURI et al., a person of ordinary skill in the art would learn to improve the quality of compressed chewing gum by providing a certain moisture content and applying substantial amounts of compression aid. Turning to YANG would add the improvements of employing active ingredients entrapped or encapsulated in a delivery system.

However, neither CHERUKURI et al. nor YANG actually address the texture problems associated with compressed chewing gum and none of them teach, motivate or suggest a person skilled in the art to reduce the amount of compression aid materials in the chewing gum formulation. On the contrary, both of the references teach to mix or blend this kind of materials with the granules before the compression step forming the final tablet (Cherukuri et al., col. 3, lines 7-16; Yang, page 5, lines 34-37). A person of ordinary skill in the art would not be motivated to deviate from this teaching, as problems with sticking and flowability would be expected. According to CHERUKURI et al., blending of a compression aid with the chewing gum granules is required in order to achieve a free flow granulation (Cherukuri et al., col. 5, lines 11-14).

There is no teaching, motivation or suggestion in CHERUKURI et al. or YANG leading a person of ordinary skill in the art to preserving a moderated tackiness of gum base granules as provided in the present invention by way of diminishing the need for compression aid materials in the blend of granules prior to compression. Even if the skilled person would seek to reduce the need for compression aid blended with the granules, there would be no hints in CHERUKURI et al. or YANG that a barrier layer of compression aid materials encapsulating the chewing gum center could solve the problem to thereby provide a compressed chewing gum with an improved texture.

Consequently, it would not be obvious to a person of ordinary skill in the art to prepare a compressed chewing gum tablet according to amended claim 1 comprising a chewing gum center fully or partly encapsulated by a barrier layer; said gum center comprising a compression of gum base granules and chewing gum additives; and said gum base granules having a moderated tackiness and wherein said barrier layer comprises at least one of lubricants, anti-adherents and glidants, and wherein said barrier layer is provided during the manufacturing of the chewing gum tablet.

It is therefore respectfully submitted that the amended claim 1 is non-obvious under 35 U.S.C § 103 over CHERUKURI et al. and YANG, and the rejection should be withdrawn.

Double Patenting Rejection

The Examiner has provisionally rejected claims 1-6, 8-19 and 28-32 on the grounds of non-statutory obviousness-type double patenting as being un-patentable over claims 1-20 and 34 of copending Application No. 10/520,387. The Examiner has also provisionally rejected claims 1-6, 8-19 and 28-32 on the grounds of non-statutory obviousness-type double patenting as being un-patentable over claims 1-55 of copending Application No. 11/028,684 in view of CHERUKURI et al. or YANG.

Upon indication of allowable subject matter in this case, Applicants will file the appropriate terminal disclaimers in order to overcome these rejections.

Based on the foregoing, all pending claims are in a condition for allowance. Accordingly, Applicant respectfully requests reconsideration and an early notice of allowance. Should the Examiner wish to discuss the amendments or arguments made herein, Applicant invites the Examiner to contact the undersigned at (513)651-6865 or via e-mail at kschnapp@fbtlaw.com.

Respectfully submitted,
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I hereby certify that this correspondence is being electronically filed with The Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, this 11th day of March 2009.

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